IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 929 of 1998

with

SPECIAL CRIMINAL APPLICATIONS No 930 & 931 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMADHIYALA (MULANI) SEVA SAHAKARI MANDALI LTD.

Versus

STATE OF GUJARAT

Appearance:(In all the matters)

MR BM MANGUKIYA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

RULE SERVED for Respondent No. 3

MR PS CHAMPANERI for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/12/2000

ORAL JUDGEMENT

1. As all these three matters are between the same parties and facts of the case and law points raised therein are almost identical, the same are taken up for hearing together and are being decided by this common order.

Heard the learned counsel for the parties.

2. The respondent No.5 is admittedly aged about 91 years. He was in service of the petitioner-Society. Against him there are three criminal cases being criminal cases No.1817/92, 1813/92 and 300/93 are pending in the Court of Judicial Magistrate First Class at Palitana. These criminal cases were filed on the complaint filed by the petitioner for alleged misappropriation of money by the respondent No.5 of the Society.

3. I fail to see any justification in the action of the petitioner to file these petitions before this Court in this matter. This is nothing but only misplaced and misconceived petitions at this stage. It is a matter where the Society has filed the petitions which were totally avoidable, at this stage. It is nothing but only a sheer wastage of public money in litigation which can conveniently be termed as "luxurious litigation". Not only this, earlier also in the same matter, the petitioner approached to this Court by filing the petitions and those were withdrawn. So by these petitions, the petitioner would have spend considerable amount in paying fees of the advocate. Secondly, an handsome amount would have been spent by it in filing of these petitions i.e. under the head of expenses as the petition runs in 55 pages and looking to the number of parties impleaded, how much amount would have been spent by the petitioner in typing is a matter of experience and realisation. In such a matter, I fail to see any justification to cover 24 pages by the petitioner to present the case. Be that as it may.

4. In these three matters, the State of Gujarat through District Magistrate, Bhavnagar, alleged to have directed the Public Prosecutor to withdraw those cases against the respondent No.5. Accordingly, the Public Prosecutor filed an application for withdrawal of these three cases. This application is pending and the petitioners can be given a right of hearing in that application by the learned Judicial Magistrate. Instead of taking decision on this application, the petitioners filed this second litigation which deserves to be deprecated. It is nothing but unnecessarily increasing

the workload of this Court by indiscriminately filing the matters which are avoidable.

5. Learned counsel for the petitioner submitted that the Public Prosecutor has to take his own decision for withdrawal of the matters and then to apply to the Court, the Public Prosecutor cannot be directed by the State Government to submit for consent for withdrawal of the case . In support of this contention, he cited decision of the Hon'ble Supreme Court.

6. Even if what it is contended by the learned counsel for the petitioner is correct, how far it is justified for the petitioner to file these petitions. This contention can be raised and could have been raised by the petitioner before the learned Magistrate. That opportunity is still available as matter is not finally decided. This is nothing but, it is to be stated at the cost of repetition, a luxurious litigation by the Society at the cost of public money. Even the petitioner has a right to challenge the decision of the Magistrate taken on the application filed by the Public Prosecutor if it goes adverse to it. It is not the stage where the Society has to file petitions before this Court. It could not have preempted the decision of the Judicial Magistrate. It is not the right of the Public Prosecutor or the State Government to withdraw the criminal cases. It is permissible only with the leave of the Court and Court possibly would not have granted leave after hearing the learned counsel for the petitioner. This is nothing but only a frivolous litigation at this stage by the petitioner.

7. In view of the fact that the matter is still pending in the Court for consideration, these petitions are wholly misconceived and misplaced and the same are dismissed. Rule discharged. In the facts of the case, no order as to costs. Learned Magistrate is directed to decide the application filed by the Public Prosecutor for withdrawal of the three criminal cases after hearing the petitioner within a period of one month from the date of receipt of writ of this order.

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zgs/-